WP(C) 3881/2006
BEFORE

THE HON'BLE MR. JUSTICE B.K.SHARMA

Heard Mr. R.P. Sarmah, learned Sr. counsel assisted by Mr. D.K. Saikia, learned counsel for the petitioner as well as Mr. K.N. Choudhury, learned Addl. Advocate-General, Assam assisted by Ms R. Chakraborty, learned State counsel. I have also heard. Mr. R.S. Chouhan, learned counsel representing the private respondents. The limited question raised in this writ petition is as to whether the President of the Gaon Panchayat can be removed upon passing a No Confidence Motion resolution by raising of hands. Referring to Section 18 (5) of the Assam Panchayat Act, 1994, it is the case of the petitioner that a No Confidence Motion cannot be passed by raising of hands and such motion can only be decided by secret ballot. Section 18 (5) of the Act reads as follows :-

(5) The voting in any meeting of Gaon Panchayat, if required, shall be by raising of hands, except in t he meeting where no confidence motion is discussed where the matter will be decided by secret ballot.

In the instant case, the petitioner was the President of the Gaon Panchayat called Bhalukmari Gaon Panchayat under Dhalpukhuri Anchalik Panchayat, Lanka in the district of Nagaon. While he was continuing as such, he was removed from the President-ship by way of No Confidence Motion resolution adopted in the meeting held on 26.7.2006 in the office of the Dhalpukhuri Anchalik Panchayat, Rampur, Hojai. On perusal of the minutes of the meeting, there is no manner of doubt that the No Confidence Motion against the petitioner was passed by raising of hands. The relevant portion of the minutes of the meeting quoted below :-

Thereafter the President requested all the members to raise their hands in favour or against Sri Sumanta Das, the President of the Gaon Panchayat. And all members raise their hands against him.

An exception has been made in Section 18 (5) of the Act in the matter of moving a No Confidence Motion. While it is permissible to decide the matters by way of voting by raising hands, but an exception has been made in case of No Confidence Motion which can be passed by secret ballot alone. Since this is a mandatory provision, the same could not have been violated by the authority and accordingly I have no hesitation to set aside and quash the impugned resolution adopted in the meeting held on 26.7.2006 by which the petitioner was removed as President of the Gaon Panchayat. Consequent upon setting aside of the resolution, needless to say that the petitioner will continue as President of the Gaon Panchayat.

Writ petition is allowed.